

P-427, 421/CP-85-652 ORDER ACCEPTING COMMENTS, DISAPPROVING NON-RECURRING CHARGES, AND REQUIRING FURTHER FILINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Petition for
Extended Area Service between
Zimmerman and the
Minneapolis/St. Paul
Metropolitan Calling Area

ISSUE DATE: October 16, 1992

DOCKET NO. P-427, 421/CP-85-652

ORDER ACCEPTING COMMENTS,
DISAPPROVING NON-RECURRING
CHARGES, AND REQUIRING FURTHER
FILINGS

PROCEDURAL HISTORY

On September 10, 1985, subscribers in the Zimmerman exchange served by Sherburne County Rural Telephone Company (SCRTC or the Company) filed a petition requesting extended area service (EAS) between Zimmerman and the Minneapolis/St. Paul metropolitan calling area (MCA).

Between September, 1990 and October, 1991, traffic studies and proposed rates were filed by the telephone companies involved in the proposed EAS route.

On July 16, 1991, the Commission issued its ORDER REQUIRING NEGOTIATIONS AND ESTABLISHING TIME FRAMES. In that Order the Commission established a schedule for resolving traffic routing disputes which had arisen in this proceeding and for processing the EAS petition.

On December 4, 1991, the Commission issued its ORDER REQUIRING THE FILING OF A LOWER COST ALTERNATIVE TO FLAT RATE SERVICE.

On December 30, 1991, SCRTC filed a lower cost alternative in response to the Commission's December 4 Order.

On March 3, 1992, SCRTC filed its estimated non-recurring charges related to the provision of EAS between Zimmerman and the MCA.

On April 9, 1992, the Department of Public Service (the Department) filed a report and recommendation on this matter.

On April 29 and July 24, 1992, US WEST Communications, Inc. (US WEST) filed comments.

On July 6, 1992, SCRTC filed a motion for the admission of its late-filed comments.

On July 9, 1992, SCRTC filed its comments in response to the Department's report.

The matter came before the Commission on September 18, 1992.

FINDINGS AND CONCLUSIONS

Numerous issues were raised by the parties in this docket. The Commission will consider them individually.

I. SCRTC's Late-filed Comments

Factual Background

In its July 16, 1991 ORDER REQUIRING NEGOTIATIONS AND ESTABLISHING TIME FRAMES, the Commission established a time schedule for filings regarding the traffic routing dispute in this docket. The Commission ordered the Department to submit its report and recommendation on cost studies, proposed rates and lower cost alternatives within 60 days of their receipt. Parties were allowed 20 days to respond to the Department's report.

Following delays in parties' filings and a time extension granted by the Commission, the Department filed its report and recommendation on April 9, 1992. Only US WEST responded to the Department's report within the 20 day response period.

On July 6, 1992, SCRTC filed a motion requesting the Commission's permission to file late comments in response to the Department's April 9, 1992 report. SCRTC explained that its attorney only began representing the company in October 1991, and did not become aware of the deadline for responses until July 1, 1992. SCRTC requested an extension until July 14, 1992 in which to file comments regarding the EAS routing issue, and a one month extension in which to file comments on remaining issues.

In the meantime, pending Commission approval of its request for a time extension, SCRTC filed comments in response to the Department's report on July 9, 1992.

No party objected to the admission of SCRTC's late-filed comments.

Commission Action

The Commission notes that company counsel, even newly retained counsel, has the obligation to note Commission deadlines and to abide by them. In this case, however, the late comments will be helpful in defining and deciding the issues raised in the Department's report. The Commission also notes that consideration of SCRTC's comments will not delay the processing of the EAS petition. The Commission will accept SCRTC's comments filed July 9, 1992.

II. Routing the Zimmerman EAS Traffic

Factual Background

SCRTC is the local exchange company (LEC) serving the Zimmerman exchange and the adjoining Big Lake exchange. Bridge Water Telephone Company (Bridge Water) serves the Monticello exchange, which adjoins the Big Lake exchange. US WEST serves the Buffalo exchange, which adjoins Monticello, and the Elk River exchange, which is part of the MCA.

In August, 1991, SCRTC and US WEST came to an agreement regarding the routing of Zimmerman EAS traffic to the MCA. In order to provide routing diversity and backup ability, the parties agreed that the Zimmerman traffic would be routed two ways. Part of the traffic would travel over SCRTC's facilities in Zimmerman and Big Lake to the Big Lake/Elk River exchange boundary. At Elk River the traffic would be passed to US WEST. Another part of the traffic would be routed over SCRTC's facilities in Zimmerman and Big Lake, and across Bridge Water's Monticello exchange to the Monticello/Buffalo exchange boundary, where it would be picked up by US WEST.

Positions of the Parties

THE DEPARTMENT

The Department agreed with Bridge Water, which opposed the routing of Zimmerman EAS traffic by means of SCRTC facilities laid across Bridge Water's Monticello's exchange. The Department stated that EAS has been found to be local service by the Commission in a number of cases, including the October 8, 1992 Runestone decision¹ and a June 20, 1989 decision in the

¹ In the Matter of a Proposal to Introduce Optional Extended Area Service Between Three Exchanges on a Trial Basis, Docket No. P-425/M-91-268, ORDER APPROVING RUNESTONE TELEPHONE ASSOCIATION'S PETITION TO INTRODUCE OPTIONAL EXTENDED AREA SERVICE ON A TRIAL BASIS BETWEEN THREE OF ITS EXCHANGES.

metropolitan EAS proceeding². Because EAS is a local service, the Department reasoned, it can only be offered by a telephone company which is operating under a territorial certificate of authority pursuant to Minn. Stat. § 237.16, subd. 1. In SCRTC's proposed routing scenario, Bridge Water holds the exclusive certificate of authority to provide local service in the Monticello exchange; SCRTC has not applied for or received such authority. SCRTC therefore cannot transport EAS traffic, a local service, across Bridge Water's Monticello exchange.

The Department argued that interexchange service can be either local or long distance in nature, depending on the type of service being provided. In this case, the provision of toll-free EAS traffic from Zimmerman to the MCA would cross exchange boundaries but remain local in nature. The interexchange concept of the service offering does not negate the need for a territorial certificate of authority to cross another LEC's territory.

The Department stated that the concept of territorial integrity was being maintained in other EAS dockets, such as the New Prague EAS proceeding.³ In that metro EAS proceeding, the Eckles Telephone Company, which serves the New Prague exchange, came to an agreement with Vista Telephone Company, which serves the Jordan exchange. Because Jordan lies between New Prague and US WEST's closest exchange in the MCA, the telephone companies agreed on a meet point on the New Prague/Jordan exchange boundary. Vista would carry New Prague's traffic on Vista's facilities from the meet point, across the Vista exchange, to the Vista/Shakopee boundary, where the New Prague EAS traffic would be picked up by US WEST. The parties to the agreement accepted and respected the concept of local exchange integrity in their agreement. The Department argued that SCRTC should comply with this concept in its EAS proceedings.

² In the Matter of the Petitions of Certain Subscribers in the Exchanges of Zimmerman, Prescott, Waconia, Belle Plaine, North Branch, Lindstrom, New Prague, Cambridge, Hudson, Houlton, LeSueur, Cannon Falls, Delano, Northfield, Buffalo, and Watertown for Extended Area Service to the Minneapolis/St. Paul Metropolitan Calling Area, Docket No. P-421, 405, 407, 430, 426, 520, 427/CI-87-76, ORDER IDENTIFYING ROUTES MERITING FURTHER CONSIDERATION, REQUIRING FURTHER INFORMATION, AND INITIATING AN INVESTIGATION.

³ In the Matter of the Petition of Certain Subscribers in the New Prague Exchange for Extended Area Service to the Minneapolis/St. Paul Metropolitan Calling Area, Docket No. P-520, 421/CP-86-537.

The Department recommended that SCRTC, Bridge Water, and US WEST be required to agree upon a proposed route for the Zimmerman EAS traffic which would comply with the concept of local territorial authority. If the parties could not reach an agreement, the Department recommended that the Commission require SCRTC to apply for a territorial certificate to provide service within Bridge Water's Monticello exchange. Only if the Commission found that the public interest would be served by a second territorial certificate would SCRTC be allowed to provide EAS service in Monticello.

SCRTC

SCRTC argued that the Department's approach marked an increase in regulation of EAS, for which there was no need. According to SCRTC, the Commission had never before required a certificate of territorial authority for the provision of EAS in these particular circumstances.

According to SCRTC, the dispositive fact which the Commission must note is that SCRTC plans to route traffic through the Bridge Water Monticello exchange by means of **SCRTC's facilities**. SCRTC had laid fiber cable across the Monticello exchange in 1991, in order to provide the transport of interLATA traffic to the MIEAC centralized access tandem in Plymouth. SCRTC would use the same facilities for the transport of EAS communications from Zimmerman/Big Lake exchanges across Monticello to the US WEST meet point. SCRTC argued that it would not be duplicating Bridge Water's facilities and therefore the reasoning behind the territorial certification requirement no longer holds. SCRTC argued from this that no certificate of local authority was necessary for SCRTC.

SCRTC also argued that its proposed EAS route will not amount to local service under either statute or Commission precedent. SCRTC cited Minn. Stat. § 237.16, subd. 1, which prohibits the furnishing of local telephone service to end users in an exchange, without first securing a certificate of public convenience and necessity. SCRTC argued that this statute is inapplicable because SCRTC will not originate or terminate any calls in Bridge Water. Because SCRTC will be transporting EAS traffic through Bridge Water, rather than providing local service to Bridge Water customers, SCRTC will not need a territorial certificate.

SCRTC also argued that previous Commission Order language regarding the local nature of EAS amounted to dicta, not considered opinions upon which the Orders were based. SCRTC applied this statement to the Runestone and Metro EAS cases cited by the Department.

Finally, SCRTC argued that the Commission should not be in the business of deciding the placement of EAS traffic. As long as parties adhere to EAS statutes and rules, EAS providers should be free to determine the routing of EAS traffic, without Commission interference or local exchange company veto power.

US WEST

US WEST stated that it is engaged in an ongoing dispute with SCRTC regarding the transport of interLATA traffic.

Commission Action

Minnesota rules and the Commission's own precedent place EAS in the category of local service.

Minn. Rules, part 7810.0100, subpart 23 defines local exchange service as follows:

"Local exchange service" means telecommunication service provided within local exchange service areas in accordance with the tariffs. It includes the use of exchange facilities required to establish connections between stations within the exchange and between stations and the toll facilities serving the exchange.

EAS falls within the rule definition of local service. In this case, it is telecommunication service (the transport of toll-free EAS from Zimmerman to the MCA) which would be provided within local exchange service areas (the exchanges of Zimmerman, Big Lake and Monticello).

The Commission has consistently found in its Orders that EAS is local service. EAS was deemed local in the Runestone and metro EAS decisions cited previously. EAS has consistently been treated as a local service, for which territorial certification is necessary, in metro EAS Orders which approve costs for proposed EAS traffic routes.

Since EAS is therefore a local service, territorial certification under Minn. Stat. § 237.16, subd. 1 is necessary for the provision of such service in a local exchange. SCRTC has not applied for a territorial certificate; Bridge Water alone has authority to provide local service in the Monticello exchange. SCRTC would have to apply for and obtain a certificate of public convenience and necessity under Minn. Stat. § 237.16, subd. 1 in order to transport EAS service across Bridge Water's Monticello exchange.

The Commission is not persuaded by SCRTC's argument that it does not require certification because it has already laid fiber across Monticello and the facility duplication issue is therefore moot. Avoidance of unnecessary facility duplication is only one reason underlying the statutory scheme of territorial integrity for local service. Other reasons for exclusive service territories include avoidance of customer confusion and promotion

of the goal of universal service. The fact that any one reason behind the statutory concept of exclusive service territories may not apply in a particular set of facts does not mean that a party may simply ignore the statute. Such a subjective notion of the law would be contrary to public policy.

It is also not entirely clear from the record when SCRTC laid the fiber across Monticello, or for what purpose. Lifting the obligation to respect territorial integrity for any telephone company which lays fiber across an adjoining service territory would open the system up to dispute and abuse.

The Commission disagrees with SCRTC that requiring territorial certification for the provision of EAS in a local exchange is an expansion of EAS regulation. This decision is consistent with the Commission's longstanding approach to territorial service authority, and with sound public policy.

Finally, the Commission agrees with SCRTC that the Commission should not be in the business of determining EAS traffic routes. It is entirely appropriate, however, for the Commission to require parties to meet and determine traffic routes which comply with Commission rules and Orders. The Commission will establish such a requirement in this case.

II. SCRTC's Proposed Lower Cost Alternative

Factual Background

SCRTC filed a lower cost alternative plan on January 3, 1992. SCRTC stated that the plan was filed under protest, since it considered that the filing need not be submitted until after a majority of Zimmerman subscribers polled indicated their preference for EAS.

SCRTC's lower cost alternative was termed Optional Metro Calling (OMC). Under this plan, residential customers in the Zimmerman exchange who did not wish to avail themselves of EAS would have the option of keeping their pre-EAS basic local service rate and adding a discounted toll pricing plan for calls to the MCA.

Positions of the Parties

SCRTC

SCRTC protested that the EAS statute does not require the filing of a lower cost alternative plan until after the three statutory criteria for EAS have been fulfilled. Since a poll has not yet been conducted in the Zimmerman exchange, the third criterion has not been met and the requirement of a lower cost alternative filing is premature. SCRTC reasoned that the development of a lower cost alternative is a time-consuming and expensive process; it should not be required until polling has shown that requisite customer support for EAS exists.

SCRTC reasoned that any lower cost alternative should offer subscribers an alternative to the EAS rate additive. In the case of Zimmerman, the basic local service rate for residential customers is approximately \$9.00 and the EAS additive would be approximately \$32.00. SCRTC reasoned that its OMC plan would offer the greatest benefit to subscribers because it would offer discounted toll pricing in lieu of the higher-priced EAS additive, rather than an option to the lower-priced basic local service. SCRTC stated that the OMC plan would fulfill statutory intent and offer a meaningful benefit to subscribers who do not wish to avail themselves of EAS.

THE DEPARTMENT

The Department did not agree with SCRTC's concept of splitting residential rates into basic local service rates and EAS rates, keeping local service the same, and offering a discounted toll alternative to EAS. According to the Department, this was not an alternative to local service, as required by the EAS statute, but simply a continuation of local service. The Department argued that the statute requires an alternative to basic local service, such as local measured service. Such an alternative would offer subscribers a true alternative to their basic local service, which would be understood to include the EAS additive once EAS is implemented.

The Department stated that SCRTC's OMC would not be feasible to implement. The Department recommended that the Commission require SCRTC to resubmit a lower cost alternative, such as local measured service, which would be an alternative to basic local service.

The Department stated that if SCRTC's OMC plan were adopted by the Commission, the Department wished to comment further regarding SCRTC's intent to limit the plan to residential customers.

Commission Action

The Commission agrees with the Department that SCRTC's lower cost alternative should be revised and resubmitted. SCRTC's proposed OMC plan would be impractical and difficult to implement fairly. It is unclear how the OMC plan would be applied in today's telecommunications environment, in which numerous long distance companies carry Zimmerman subscribers' toll calls through MIEAC to the MCA. It is also unclear how SCRTC could offer a service in which Zimmerman's local calls would be flat rate but calls to the MCA could be flat rate or measured. These and other logistical difficulties make local measured service a better choice for Zimmerman subscribers.

The Commission agrees with the Department's opinion that the EAS statute requires a true alternative to local service, which would include the EAS additive after EAS has been implemented. Local measured service would be an appropriate local service alternative which would fulfill the intent of the EAS statute.

The Commission will require SCRTC to file the revised plan prior to the polling of Zimmerman subscribers. As the Commission stated in its December 4, 1992 ORDER REQUIRING THE FILING OF LOWER COST ALTERNATIVE TO FLAT RATE SERVICE, "The Commission believes it would help Zimmerman subscribers to know the lowest rate at which they can receive service if they vote to join the metropolitan calling area." Subscribers require information in order to make an informed decision on the implementation of EAS. The lower cost alternative is a part of the necessary information for an informed vote.

The Commission will require SCRTC to develop and submit a lower cost alternative plan based on local measured service for Zimmerman subscribers.

III. SCRTC's Proposal to Lease COE and OSP from an Affiliate

Factual Background

As a result of a reorganization recently approved by the Commission, SCRTC became one of six affiliates wholly owned by Sherburne Tele Systems. Sherburne Fiber-Com, Inc. (SFC), which leases fiber transport services, is another one of the six affiliates. SFC has not applied for or received a certificate of authority to provide service in Minnesota.

In its cost study filed for the Zimmerman EAS proposal, SCRTC stated that it would lease central office equipment (COE) and outside plant (OSP) from SFC. This is the first time that a Minnesota LEC which is an affiliate of a holding company has proposed leasing COE or OSP for the provision of EAS from another affiliate of the holding company.

Positions of the Parties

THE DEPARTMENT

The Department stated that it could not recommend acceptance of the contractual arrangement between SCRTC and SFC until the agreement is written, signed and submitted to the Department and the Commission for review. The Department recommended that the Commission require SCRTC to file a signed copy of the lease agreement when the company refiles its EAS revenue requirement study.

SCRTC

SCRTC responded to the Department's report by submitting an unsigned informational copy of the lease agreement between SCRTC and SFC. SCRTC explained that it could not submit a final signed agreement until the exact number of trunks required to be leased is determined.

Commission Action

The Commission shares the Department's concerns regarding proper cost allocation between regulated and unregulated affiliates in a leasing arrangement for the provision of EAS. The Commission will require SCRTC to submit certain filings which will enable the Commission and the Department to monitor possible cross-subsidization between the affiliates. The Commission will require SCRTC to file the proposed final lease, the proposed rates if it purchased the facilities instead of leasing them, and documentation to demonstrate that its lease proposal provides the facilities at the lowest rates to ratepayers. With these filing requirements, the Commission will be able to monitor the situation to ensure that ratepayers are not harmed by SCRTC's arrangement with its affiliate.

IV. SCRTC's Cost of Money

Factual Background

When SCRTC filed cost figures in October, 1990, the Company used a 13.5% return on equity (ROE) in its calculations. When SCRTC refiled cost figures in October, 1991, the Company used a 15.0% ROE.

Positions of the Parties

SCRTC

SCRTC stated that it reported a 14.09% ROE in its 1991 Jurisdictional Annual Report filed with the Department in May, 1992. All telephone companies' annual reports are reviewed by the Department to determine if rates are excessive. When the Department issued a letter on June 24, 1992, listing companies whose rates were being investigated, SCRTC's name was not on the list. SCRTC noted that only telephone companies with ROEs in excess of 15% appeared on the investigation list. From this, SCRTC inferred that an ROE below 15% was considered reasonable and justified. SCRTC therefore concluded that its 15% ROE used in the EAS cost figures could not be found excessive.

SCRTC also argued that the Department's proposed ROE level of 11.5% would not leave the Company income neutral, as required by the EAS statute, since 11.5% is well below SCRTC's latest filed ROE of 14.09%.

THE DEPARTMENT

The Department objected to the 15.0% ROE filed by SCRTC as part of its EAS cost studies. The Department noted that the economic environment has declined between SCRTC's two cost filings, yet the ROE figure was higher in the second filing. The Department felt the Company's proposed 15.0% ROE would not be supported by a discounted cash flow analysis. The Department stated that the 15.0% benchmark used in its latest earnings investigation was

developed in mid-1990 and was no longer valid in today's economic environment. The Department recommended that the Company be required to refile its cost figures using an 11.5% ROE. The Department based this figure on discounted cash flow analyses it had performed in other dockets on telephone companies which it considered comparable to SCRTC.

Commission Analysis

The Commission does not agree with SCRTC that the Department's benchmark for determining which companies will be subject to investigation amounts to a justification for a 15.0% ROE. This figure is simply a guideline for the Department to begin determining if rates are excessive. Neither is the Commission convinced by the Department's proposed figure of 11.5%, since the Department did not perform a discounted cash flow or other type of analysis on SCRTC's cost figures, and the level is nearly 3% lower than SCRTC's latest filed ROE.

The Commission will require SCRTC to refile cost figures using a 13.25% ROE. This level is within the range of ROEs found reasonable in other recent EAS dockets. It is close to the ROE proposed by SCRTC in its original EAS cost filing, before SCRTC based its ROE on the Department's rate investigation benchmark. A slight downward adjustment from 13.5% to 13.25% is supported by the downward trend in the economy since the Company's first cost filing.

The Commission notes that acceptance of a particular ROE for the purpose of EAS cost studies does not necessarily mean that the Commission will approve the same ROE in a company's next general rate case. In each general rate case, the rate of return including ROE must be determined based upon the facts presented at that time.

V. SCRTC's Estimated Non-Recurring Charges

Factual Background

On March 3, 1992, SCRTC filed its estimated non-recurring charges with the Commission. The Company's filing included all non-recurring accounting, legal, engineering, regulatory and labor costs associated with this EAS proceeding since its inception in 1985. SCRTC calculated the costs on a one-time basis and on the basis of a five-year amortization.

Positions of the Parties

SCRTC

SCRTC acknowledged that the non-recurring charges might be higher than average due to the length of this EAS proceeding. The Company felt that the proposed five-year amortization would mitigate the impact on its ratepayers. SCRTC disagreed with the Department that these charges may have already been recovered

from ratepayers through basic local rates. According to the Company, "EAS costs are properly allocable to EAS rates, not local exchange rates."

THE DEPARTMENT

The Department stated that the Commission has allowed recovery of three types of non-recurring charges in prior EAS proceedings: polling costs; non-recurring labor costs associated with the conversion of the network from toll to EAS; and EAS usage stimulation study costs. The Department recommended that SCRTC be limited to recovery of these costs in the Zimmerman EAS proceeding. The Department argued that many of the costs submitted by SCRTC, such as regulatory, legal and accounting costs, are simply part of the regulatory "price" paid for the benefit of providing telephone service in an exclusive local service territory. Furthermore, the Department argued that these costs have already been recovered from Zimmerman ratepayers through basic local rates.

Commission Action

Minn. Stat. § 237.161 does not specify what non-recurring costs are recoverable by a LEC when EAS is implemented. The Commission has faced this issue in a number of cases. On June 8, 1992, for example, recovery of non-recurring charges was addressed in the Commission's ORDER SETTING SURCHARGES⁴. In that Order the Commission found that non-recurring charges for polling costs, network conversion costs, and in some cases, traffic stimulation costs, could be recovered by LECs.

The Commission continues to feel that the aforementioned costs may appropriately be submitted for recovery of non-recurring costs associated with the provision of EAS. Unlike such categories as regulatory costs or accounting or legal fees, these types of costs are clearly one-time and EAS-specific. These costs, unlike day to day expenses incurred by the company, are properly absorbed by the ratepayers who will benefit from the implementation of EAS.

Should subscribers in Zimmerman vote in favor of EAS to the MCA, the Commission will require SCRTC to refile its estimated non-recurring costs for consideration by the Commission. SCRTC must limit these costs to polling costs, non-recurring labor costs associated with the conversion of the network from toll to EAS, and EAS usage stimulation study costs, if such studies are required.

⁴ In the Matter of the Petition of Certain Subscribers in the Belle Plaine, Cologne, New Prague, and Waconia Exchanges for Extended Area Service to the Minneapolis/St. Paul Metropolitan Calling Area, Docket Nos. P-405, 421/CP-86-55; P-407 et al/CI-90-441; P-520, 421/CP-86-537; P-430, 421/CP-86-5.

VI. US WEST's Cost of Money

Factual Background

US WEST filed cost studies for the proposed Zimmerman EAS route in December, 1990 and October, 1991. There was no change in the proposed cost of money for US WEST between the two filings. In its studies, US WEST used a forecasted ROE and cost of debt (COD).

Positions of the Parties

THE DEPARTMENT

The Department argued that the cost of money filed by US WEST was too high. The Department stated that US WEST based its cost of money on materials dated between December 31, 1989 and March 1, 1990. According to the Department, this supporting material did not provide an accurate basis for ROE or COD because it dated from a period before the current economic recession.

The Department recommended that the Commission require US WEST to refile cost studies using current ROE and COD estimates developed by the Department. In the alternative, the Department recommended that the Commission require US WEST to refile cost studies using the last ROE developed for US WEST's interstate jurisdiction by the Federal Communications Commission (FCC). The Department felt that the FCC figure would be helpful because it would free US WEST from the necessity of developing cost figures, would provide updated figures from the FCC every six months, and would be acceptable by the Department without lengthy examination.

US WEST

US WEST argued that the Department provided no factual support for its recommendation against US WEST's cost studies, or for its own estimated ROE and COD. US WEST opposed the adoption of the FCC cost of money. US WEST stated that the FCC level is not company-specific, is not updated every six months, and would invalidate the EAS cost studies by introducing an embedded cost of debt into an incremental cost study.

Commission Action

The Commission finds that US WEST should update and revise its ROE and COD figures and refile cost studies using those figures. Because it is company-specific and updated, this method will be preferable to using FCC figures. The Department will be allowed to comment on the revised figures and may include in its comments proposed rates based on cost of money figures that it deems appropriate.

VII. Interexchange Carrier Toll Contribution

Factual Background

On November 21, 1991, the Commission issued its ORDER DETERMINING THE STATUS OF INTEREXCHANGE CARRIERS UNDER MINN. STAT. § 237.161, SUBD. 3 (b) (1990). In that Order the Commission found that interexchange companies involved in an EAS proceeding are not affected telephone companies and thus need not remain income neutral when EAS is implemented.

Since the Commission's November 21, 1991 Order, certain parties have questioned if the Commission's decision extends to intraLATA petitions for EAS to the MCA as well as to interLATA petitions. The issue had been raised in another docket⁵ and an Order had not been issued in that docket at the time of the Commission's September 18, 1992 meeting in this proceeding.

Positions of the Parties

THE DEPARTMENT

Although the Department remained in disagreement with the Commission's finding that interexchange companies are not affected telephone companies, the Department stated that it "has no choice but to recommend that the Commission order [US WEST] to refile its EAS revenue requirement in this docket." The Department assumed that the refiled cost studies would not include US WEST as an affected telephone company.

US WEST

US WEST agreed with the Department's position. US WEST assumed that its refiled cost studies would not include it as an affected telephone company in the Zimmerman EAS proceeding.

Commission Action

Because the Commission is currently considering in another docket whether the Commission's November 21, 1991 decision on affected telephone companies applies to intraLATA petitions for EAS to the MCA, the Commission will refrain from deciding US WEST's status in this proceeding at this time. Rather, the Commission will require US WEST to refile cost studies and proposed rates that reflect US WEST in both affected and nonaffected status. The rates must therefore reflect inclusion and exclusion of US WEST's toll contribution for Zimmerman to MCA independent local exchange company (ILEC) routes.

⁵ In the Matter of a Petition for Extended Area Service Between the Monticello Exchange and the Minneapolis/St. Paul Metropolitan Calling Area, Docket No. P-404, 421, 430, 407, 405, 520, 426/CP-89-1039.

ORDER

1. SCRTC's comments filed July 9, 1992, are accepted.
2. Within 20 days of the date of this Order, SCRTC, US WEST, and Bridge Water shall meet to determine the most cost efficient method for routing the Zimmerman-MCA EAS traffic. If the most cost efficient method includes routing traffic across the Monticello exchange, that traffic should be carried over Bridge Water facilities.
3. Within 30 days of the date of this Order, the local telephone companies serving Zimmerman and the MCA shall file their revised cost studies and proposed rates.
4. Within 60 days of the date of this Order, the Department shall file a report and recommendation on the revised cost studies and proposed rates.
5. Within 70 days of the date of this Order, interested parties who wish to respond to the Department's report shall file their comments.
6. SCRTC shall refile its cost studies using a return on equity of 13.25 percent.
7. Along with its cost study, SCRTC shall file its final proposed lease with Sherburne Fiber Com, Inc., the costs if SCRTC were to purchase the central office equipment and outside plant instead of leasing it, and documentation that the lease arrangement results in the provision of EAS at the lowest rate to SCRTC ratepayers.
8. US WEST shall refile its cost studies and proposed rates using its revised cost of debt and return on equity.
9. US WEST shall refile its cost studies reflecting both inclusion and exclusion of its toll contribution for Zimmerman to MCA ILEC routes.
10. SCRTC, US WEST, GTE, Eckles, Scott-Rice, United and Vista telephone companies shall file two sets of proposed rates: one set that recovers a total revenue requirement that includes US WEST's toll contribution for Zimmerman to MCA ILEC exchange routes; and another set that recovers a revenue requirement omitting that contribution.
11. Proposed rates for existing MCA subscribers shall meet the requirements of Minn. Stat. § 237.161 and shall use the companies' past practices for establishing EAS additives.
12. Within 30 days of the date of this Order, SCRTC shall develop and file a revised lower cost alternative based on local measured service for Zimmerman subscribers.

13. Every filing shall be served upon the Department on the same day that it is filed with the Commission.
14. SCRTC's proposed non-recurring charges are not approved. If a majority of the subscribers voting on Zimmerman EAS vote in favor of EAS, SCRTC shall refile its proposed non-recurring charges including only polling costs, non-recurring labor costs associated with the conversion of the network from toll to local and EAS usage stimulation costs (if such a study is ordered by the Commission). A schedule for refiling the non-recurring costs will be established, if necessary, following the conclusion of the Zimmerman exchange balloting.
15. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)